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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

UNITED STATES OF AMERICA, For the Use)
of SAN BENITO SUPPLY, a California)
corporation,)

Plaintiff,)

v.)

KISAQ-RQ 8A 2 JV, a joint venture;)
FRAZIER MASONRY COMPANY, a)
California corporation; FEDERAL)
INSURANCE COMPANY, an Indiana)
corporation; WESTERN SURETY)
COMPANY, a South Dakota corporation,)

Defendants.)

CASE NO. 5:13-CV-00469-HRL

**STIPULATION FOR EXTENSION OF
THE FACT DISCOVERY, EXPERT
DISCLOSURES AND RELATED
REPORTS, EXPERT DISCOVERY,
AND ORDER THEREON**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, United States
of America, For the Use of San Benito Supply, by and through its attorneys of record,
Monteleone & McCrory, LLP, and Defendants KISAQ-RQ 8A 2 JV, Federal Insurance Company
and Western Surety Company, and Defendant and Counterclaim Plaintiff Frazier Masonry
Corporation, by and through their attorneys Case, Ibrahim & Clauss, LLP, as follows based on
the herein below facts and terms:

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- 1 1. The Fact Discovery cutoff date is currently December 13, 2013;
- 2 2. The last date for the service of expert designations (with reports) is currently
- 3 December 19, 2013;
- 4 3. The last date for the service of rebuttal expert designations (with reports) is
- 5 currently January 3, 2014;
- 6 4. The Expert Discovery cutoff date is currently January 20, 2014;
- 7 5. The Final Pre-Trial Conference is February 25, 2014.
- 8 6. The parties conducted a number of non-party depositions in November 2013.
- 9 7. On November 27, 2013, defendant KISAQ-RQ 8A 2 JV notified San Benito
- 10 Supply that it was not pursuing delay damages in this lawsuit. On December 2, 2013, defendant
- 11 KISAQ-RQ 8A 2 JV notified San Benito Supply that it was not pursuing liquidated damages in
- 12 this lawsuit. The parties now must determine whether the depositions currently scheduled now
- 13 need to be taken or can be cancelled. This also requires the parties to evaluate which person
- 14 most knowledgeable depositions must still go forward and which may be cancelled. The parties
- 15 must revise the deposition schedule and will not be able to complete the balance of the
- 16 depositions prior to the current fact discovery cutoff date of December 13, 2013.
- 17 8. Under 32 CFR §§ 97.6(c), 516.40, and 516.41, the Army must authorize the
- 18 appearance of its personnel or the production of official documents in private litigation. On
- 19 November 12, 2013, pursuant to Department of Defense directives, 32 CFR § 97.6(c), and Army
- 20 regulations, 32 CFR §§ 516.40 - 516.48, San Benito Supply wrote to the Sacramento Office of
- 21 Counsel for the United States Corps of Engineers, requesting permission to take the deposition of
- 22 Karl Mai, the Materials/Architectural Engineer for the Corps on the subject project. Mr. Mai is
- 23 expected to have knowledge on subjects related to the concrete mix designs, submittals regarding
- 24 the concrete, and other facts relevant to the issues in this lawsuit. Mr. Mai has knowledge of
- 25 how the Corps dealt with the submittals for the concrete originally placed as well as the
- 26 replacement concrete utilized, as he is believed to be the person who rejected or approved those
- 27 submittals.

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9. San Benito Supply has been in contact with the Office of Counsel for the Corps. As of December 2, 2013, permission has not been given to take the deposition of Mr. Mai.

10. San Benito Supply, Frazier Masonry Corporation, and KISAQ-RQ 8A 2 JV agree that an additional 30 days are needed to complete the fact discovery and that all other discovery cutoff dates should be extended by 30 days.

11. The parties, through their attorneys of record, hereby stipulate to the continuance of the Fact Discovery cutoff date from December 13, 2013 to January 13, 2014.

12. The parties, through their attorneys of record, hereby stipulate to the continuance of the service of expert designations (with reports) deadline from December 19, 2013 to January 20, 2014.

13. The parties, through their attorneys of record, hereby stipulate to the continuance of the rebuttal expert designations (with reports) deadline from January 3, 2014 to February 3, 2014.

14. The parties, through their attorneys of record, hereby stipulate to the continuance of the Expert Discovery cutoff date from from January 20, 2014 to February 20, 2014.

15. This stipulation may be executed by fax or email and that fax or email signature will be treated as an original for all purposes.

16. This stipulation may be executed in counterparts, and that all executed counterparts will be taken together and treated as one full and complete document.

IT IS SO STIPULATED AND AGREED.

DATED: December 3, 2013

MONTELEONE & McCRORY, LLP

By 

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1 DATED: December 3, 2013

CASE, IBRAHIM & CLAUSS, LLP

2
3 By: 

BRIAN S. CASE

4 F. ALBERT IBRAHIM

Attorneys for Defendants KISAQ-RQ 8A JV.,

5 FEDERAL INSURANCE COMPANY AND

6 WESTERN SURETY COMPANY and

Defendant/Counterclaimant FRAZIER MASONRY
CORPORATION

7 aibrahim@ciclaw.com

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9 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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11 Date: December 20, 2013

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HOWARD R. LLOYD
United States Magistrate Judge